

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 202 of 1991

with

APPEAL FROM ORDER No 553 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KISHORKUMAR J. AGRAWAL

Versus

RAKESHKUMAR J. AGRAWAL

Appearance:

1. Civil Revision Application No. 202 of 1991
MR DD VYAS, Sr. Adv. for Petitioners
MS ROOPAL PATEL for Respondents
2. Appeal from Order No 553 of 1991
MR DD VYAS for Appellants
MS ROOPAL R PATEL for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

ORAL JUDGEMENT

1. Learned counsel for the appellants - petitioners raised manifold contentions on merits of the matter, but in view of the order which I propose to pass in the facts of this case, I do not consider it to be appropriate and necessary to give out the detail facts of the matter as well as to deal with all the contentions raised by the learned counsel.

2. Both these revision application and appeal from order arises from one and the same suit. In the appeal, the order has been challenged by the appellants of the learned trial court under which the interim relief has been granted in favour of the plaintiff - respondent. In the revision application the order has been challenged of the learned trial court under which it has reviewed its earlier order of framing of the issue and to decide the same as preliminary issue. The suit out of which this appeal and revision arise is of the year 1990 being special civil suit NO. 473 of 1990 in the court of Civil Judge (S.D.), Surat. Interim injunction which has been granted by the court below is continuing for about ten years and in case it is ordered to be continued for few months more it will not affect either of the parties. To consume valuable and precious time of the court now at this stage when the suit is of the year 1990 is not in the larger interest of the litigants. Moreover, it is only an interlocutory order which is subject to final decision in the suit. Similar is the case with the question of framing of the issue and decide the same as preliminary issue because now at this stage if this course is adopted it will unnecessarily increase the litigation because the party against whom the decision is given they will go against that order in the higher forum and the suit of the year 1990 shall remain pending. Instead, the court has to permit to decide all the issues together and then the suit will be disposed of finally from one court and these all the points which are the subject matter of the preliminary issue can be raised in the appeal. Time has now come where the court as well as the members of the Bar have to take care to see that as far as possible and more so in the avoidable cases the court's valuable and precious time may not be consumed. In the case in hand, the decision given in the appeal in the matter of temporary relief and if that order has been reversed, I fail to see what benefits the petitioners/appellants can get. Ultimately that decision is also an interlocutory order and the same shall be

subject to the final decision. Whatever findings given while deciding the application for temporary injunction or interim relief are not binding on the court while deciding the suit finally. Otherwise also, when this court has not considered it to be a fit case to protect the appellants, the interim injunction which is granted and continued may not be interfered with and reversed at this stage.

3. Shri D.D. Vyas, Sr. Advocate, appearing for the appellants in the appeal contended that once this court has not interfered with this order then in the eventuality of the final decision, the appellate court may also lightly grant the interim relief.

4. I do not find any substance in this contention. It is not the law. If after the decision of the suit finally in the appeal, the court will decide to grant of temporary injunction pending appeal in accordance with law. This temporary injunction granted shall continue till the decision of the suit and thereafter the appellate court has to apply its fresh mind to the matter. However, it is made clear that this court is not affirming the order of the court below granting interim relief on merits. In the peculiar facts of this case, this court is not interfering with that order. It is always open to the court where occasion arises to consider the question of grant of interim injunction in accordance with law and without having any influence of the fact that the learned trial court has granted interim relief and in the appeal this court has not interfered with. Possibility of reversing this order in case the matter is heard on merits also cannot be overruled. It is both ways. The court may affirm or may not affirm the order. So this is only what the court has to do for the appellants in this matter to relieve them from this apprehension what their learned counsel has contended.

5. In the result, both these revision application and appeal from order are disposed of in the terms that the learned trial court to decide the suit finally within a period of six months from the date of receipt of writ of this order. It is expected of both the parties to give their fullest cooperation to the court in deciding the suit within a stipulated period. It is expected from them not to adopt any delaying tactics. The revision application and appeal from order and Rule therein stand disposed of accordingly with no order as to costs. Liberty is granted to both the parties for revival of the appeal and revision application in case of difficulty.

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